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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* DAVE MCDYSAN, HOWARD LEE THOMAS, and LEI YAO

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Appeal 2011-005567  
Application 09/723,480  
Technology Center 2400

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*Before* JOSEPH L. DIXON, JAY P. LUCAS, and THU A. DANG,  
*Administrative Patent Judges.*

DANG, *Administrative Patent Judge.*

DECISION ON APPEAL

I. STATEMENT OF THE CASE

Appellants appeal from the Examiner's final rejection of claims 1-43 under 35 U.S.C. § 134(a) (2002). We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

## A. INVENTION

According to Appellants, the invention relates in general to communication networks and, in particular, to an Internet Protocol-centric communication network (Spec. 1, ll. 25-26).

## B. ILLUSTRATIVE CLAIM

Claim 1 is exemplary and is reproduced below:

1. A method of communication in a network access system, whereby functionality of the network access system is distributed among an external processor, a programmable access device, and an access router, said method comprising:

receiving a control message from the external processor, by the programmable access device, to establish a configuration of the programmable access device;

receiving, by the programmable access device, messages from a first network external to the network access system via a first network interface;

processing, by the programmable access device, the messages from the first network to distinguish between various message types and to establish a first subset of the received messages and a second subset of the received messages;

communicating the first subset of the received messages from the programmable access device to the external processor for service processing in accordance with the configuration; and

routing the second subset of the received messages not communicated to the external processor, via the access router, from the network access system via a second network interface different from the first network interface to a second network external to the network access system, wherein the second network is different from the first network.

### C. REJECTIONS

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Grant	US 5,027,269	June 25, 1991
Haas	US 5,115,432	May 19, 1992
Feldman	US 6,055,561	Apr. 25, 2000
Gai	US 6,167,445	Dec. 26, 2000
Albert	US 6,606,316 B1	Aug. 12, 2003
Gai II	US 6,651,096 B1	Nov. 18, 2003
Gibson	US 6,680,943 B1	Jan. 20, 2004
Mo	US 7,133,403 B1	Nov. 7, 2006

Claims 1-4, 7-9, 12, 13, 17, 20-24, 27, 28, 31, 32, 36, 39, and 40 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Albert in view of Gai.

Claims 5 and 25 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Albert in view of Gai and Haas.

Claims 16, 18, 35, and 37 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Albert in view of Gai and Feldman.

Claims 19 and 38 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Albert in view of Gai and Grant.

Claims 10, 11, 29, and 30 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Albert in view of Gai and Gai II.

Claims 6, 14, 15, 26, 33, 34, 42, and 43 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Albert in view of Gai and Gibson.

Claim 41 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Albert in view of Gai and Mo.

## II. ISSUE

Has the Examiner erred in concluding that the combined teachings of Albert and Gai would have suggested “processing, by the programmable access device, the messages from the first network to distinguish between various message types and to establish a first subset of the received messages and a second subset of the received messages” and “routing the second subset of the received messages not communicated to the external processor, via the access router, from the network access system via a second network interface different from the first network interface to a second network external to the network access system” (claim 1)? In particular, the issue turns on whether there is any suggestion in Albert of distinguishing between message types for the messages from a first network.

## III. FINDINGS OF FACT

The following Findings of Fact (FF) are shown by a preponderance of the evidence.

### *Albert*

1. Albert discloses sending packets from clients 201, 202, and 203 through a network 210 to a network device including at least one forwarding agent 231 and 232, and at least one service manager 241 and 242, wherein a group of servers 220 receives the forwarded packets from the network device (Fig. 2A; col. 6, ll. 15-44).
2. The forwarding agents 231 and 232 send the packet to a service manager 241 or 242, and send a notification that the packet has been seen to a service manager 241 or 242, while the service managers 241 and 242 send specific instructions to each of the forwarding agents

- 231 and 232 detailing how certain flows of packets are to be processed (col. 6, ll. 44-57).
3. Server 222 communicates with network 210 through either of the forwarding agents, server 221 communicates with network 210 exclusively through forwarding agent 231, and server 223 communicates with network 210 exclusively through forwarding agent 232 (Fig. 2A; col. 6, ll. 30 - 35).

#### IV. ANALYSIS

Appellants argue that the prior art “is devoid of any teaching of the claimed first and second subsets of received messages, wherein the second subset is routed, via the access router, via a second network interface different from the first network interface, to a second network external to the network access system” (App. Br. 8-9, emphasis omitted). In particular, Appellants explain that “the service manager [of Albert] is not receiving messages that have been divided into two subsets” but rather, “the traffic bound for the group of services 220 is divided into two groups, one group passing through forwarding agent 231 and the other group passing through forwarding agent 232” wherein “[t]he traffic originating from network 210 is divided between the two forwarding agents, rather than being sent to the service manager” (Reply Br. 4).

As the Examiner states, in a prior Decision, the Board of Patent Appeals and Interferences (Board) determined that Albert anticipates the servers are on a second network external to the first network (Ans. 15-16). However, though the Examiner also states that the Board also determined that Albert also anticipates “the second subset of packets are routed via a

second network interface” (*id.* at 16), such determination was not made by this Board since such “second subset” was not previously claimed. That is, we agree with Appellants that we did not address the “second subset” feature in the prior Decision (Reply Br. 4).

After reviewing the record on appeal, we agree with Appellants and find that the prior art cited by the Examiner does not teach or suggest “processing, by the programmable access device, the messages from the first network to distinguish between various message types and to establish a first subset of the received messages and a second subset of the received messages” and “routing the second subset of the received messages not communicated to the external processor, via the access router, from the network access system via a second network interface different from the first network interface to a second network external to the network access system” as required by claim 1. We agree with Appellants’ argument that Albert does not even disclose a second network that is “receiving messages that have been divided into two subsets” (Reply Br. 4). In fact, we cannot find any teaching or suggestion in the portions of Albert and Gai cited by the Examiner of distinguishing between message types for messages from a first network and thus establish first and second subsets.

Albert discloses sending packets from a network to a network device such as a forwarding agent (FF 1), wherein the forwarding agent sends the packet to a service manager (FF 2) and a particular server communicates with network exclusively through a particular forwarding agent (FF 3). As Appellants explain, “the traffic bound for the group of services 220 is divided into two groups, one group passing through forwarding agent 231 and the other group passing through forwarding agent 232” wherein “[t]he

traffic originating from network 210 is divided between the two forwarding agents” (Reply Br. 4). That is, the traffic either passes through one forwarding agent or another forwarding agent, but the traffic coming from either forwarding agent is never distinguished and first and second subsets are never established from either forwarding agent. Thus, though we agree with the Examiner that a “first network” could be interpreted broadly as reading on the network of forwarding agents, we find that messages from such “first network” are not distinguished between various message types to establish a first subset and a second subset of the received messages, as required by claim 1.

Thus, though we agree with the Examiner that Albert discloses “servers on a second network external to the first network” (Ans. 15-16) , we do not find any teaching or fair suggestion of “processing, by the programmable access device, the messages from the first network to distinguish between various message types and to establish a first subset of the received messages and a second subset of the received messages” and thus “routing the second subset of the received messages not communicated to the external processor, via the access router, from the network access system via a second network interface different from the first network interface to a second network external to the network access system” as required by claim 1.

As such, we reverse the rejection of representative claim 1 and claims 2-4, 7-9, 12, 13, 17, 20-24, 27, 28, 31, 32, 36, 39, and 40 falling therewith.

We also find that Haas, Feldman, Grant, Gai II, Gibson and Mo also do not cure these noted deficiencies of Albert and Gai. As such, we also reverse the rejection of claims 5 and 25 over Albert in view of Gai and Haas;



the rejection of claims 16, 18, 35, and 37 over Albert in view of Gai and Feldman; the rejection of claims 19 and 38 over Albert in view of Gai and Grant; the rejection of claims 10, 11, 29, and 30 over Albert in view of Gai and Gai II; the rejection of claims 6, 14, 15, 26, 33, 34, 42, and 43 over Albert in view of Gai and Gibson; and the rejection of claim 41 over Albert in view of Gai and Mo.

#### V. CONCLUSION AND DECISION

Appellants have shown that the Examiner erred in holding claims 1-43 unpatentable under 35 U.S.C. § 103(a). Accordingly, we do not sustain the Examiner's rejection with respect to any claim on appeal. Therefore, the Examiner's decision rejecting claims 1-43 is reversed.

REVERSED

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